

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

October 25, 2007

\_\_\_\_\_  
No. 07-20069  
Conference Calendar  
\_\_\_\_\_

Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

ROBERTO MARTINEZ-REYES, also known as Roberto Martinez Reyes

Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:06-CR-295-1  
\_\_\_\_\_

Before JOLLY, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:\*

Roberto Martinez-Reyes (Martinez) appeals his guilty plea conviction and sentence for illegal reentry following removal from the United States. Martinez contends that his sentence is unreasonable because this court's post-Booker<sup>1</sup> rulings have effectively reinstated the mandatory guidelines regime condemned

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

<sup>1</sup> United States v. Booker, 543 U.S. 220 (2005).

in Booker. This argument is foreclosed. See *Rita v. United States*, 127 S. Ct. 2456, 2462 (2007).

In light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), Martinez challenges the constitutionality of 8 U.S.C. § 1326(b)'s treatment of prior felony and aggravated felony convictions as sentencing factors rather than elements of the offense that must be found by a jury. This court has held that this issue is "fully foreclosed from further debate." *United States v. Pineda-Arellano*, 492 F.3d 624, 625 (5th Cir. 2007), petition for cert. filed (Aug. 28, 2007) (No. 07-6202).

The judgment of the district court is AFFIRMED.